

OGC Has Reviewed

25-1502  
Subject

Comptroller

6 November 1952

Office of the General Counsel

Legality of Payment of Travel and Transportation Expenses Incident to Home Leave for Overseas Personnel on Permanent Change of Station to the Continental United States.

- REFERENCE:
- A. Memorandum from Assistant Comptroller to General Counsel, dated 13 May 1952.
  - B. Memorandum from Chief, Finance Division to Assistant Comptroller, dated 21 April 1952, subject: Frequent Changes in Dependency and Residency Reports.
  - C. Memorandum from Chief, Finance Division to Comptroller, dated 11 April 1952, subject: Granting of Home Leave.

1. The referenced memoranda present the question whether it is proper to authorize the payment of travel and transportation expenses incident to home leave for overseas personnel of the Central Intelligence Agency on permanent change of station to the continental United States.

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3. The concept of "home leave" embodied in the quoted sections was substantially adapted from the Foreign Service Act of 1946 (Public Law 724-79th Congress). Strictly speaking, of course, CIA personnel receive leave benefits similar to those granted other federal employees under the Annual and Sick Leave Act of 1951 (Public Law 233-82nd Congress). They are not entitled to the special leave in addition to normal annual leave which foreign service personnel accumulate during periods of overseas service and which colloquially is referred to as "home leave" since its use is restricted to the United States. See Section 203(f) of the Annual and Sick Leave Act of 1951. In effect, therefore, the provisions of Section 5(a)(3) are nothing more than an authorization for the payment of travel and transportation charges.

4. Authorities similar to Section 5(a)(3) are extended to the State Department by Section 933 of the Foreign Service Act of 1946 and Section 203(e) of the Annual and Sick Leave Act of 1951. Identical questions of construction with respect to the subject of this memorandum arise under these sections. We have, therefore, consulted informally with officials of the State Department for information with respect to their administration of the provisions applicable to their personnel. In addition, we have discussed the problem unofficially with a cleared member of the Legal Staff of the General Accounting Office to anticipate what the Comptroller General's reaction to the question might be.

5. The purpose of Section 933 and Section 203(e) is to enable those foreign service personnel, who have accepted the career concept of overseas service, to spend some leave time in this country with family and friends after two years of continuous service abroad. With true legislative largesse, this leave time is considered a distinct benefit not just to the individual, but also to the Government. There appears to be implicit in the language of the sections themselves, and

in the underlying philosophy, an attempt to give recognition to a continuity of service where willingness to accept successive overseas assignments is demonstrated.

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"Home leave may not be granted except when it is planned that the employee will return to a post of duty abroad, either immediately or upon completion of an assignment in the United States."

The administration of this provision involves some apparently subjective determinations whether "it is planned that an employee will return to a post of duty abroad." The difficulty of implementation is lessened to an extent in the case of foreign service personnel by the consideration that the foreign service is essentially an overseas program and that every member of the service subjects himself, as long as he remains a member, to periodic orders to duty abroad. For this reason the State Department, under its statutory authorities, had considered it proper in the case of foreign service personnel transferred on permanent change of station to the United States, to pay the costs of travel and transportation incident to home leave.

7. Similar reasoning for the justification of the payment of travel and transportation expenses incident to "home leave" would apply in the case of Agency personnel where it may reasonably be determined that these individuals will return overseas at some time in the future after a staff assignment in the United States. Inevitably, it is more difficult to plan the coordinated rotation of departmental and overseas personnel of this Agency than is possible in the Foreign Service. Operational requirements of CIA are not always subject to

long-range systematic development. However, it is our opinion that there is no legal objection to the payment of travel and transportation charges incident to leave in the United States of overseas personnel of CIA on permanent change of station to this country where it can be reasonably ascertained that the individual concerned has demonstrated his willingness to accept future overseas assignments when the operations of this Agency may require.

8. Whether such a willingness has been demonstrated would depend on the facts of a particular case and does not lend itself easily to advance determination.

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Attachments - Memo fr Finance to Asst. Comptroller, dated 21 April 1952, subject: Frequent Changes in Dependency and Residence Reports

Memo fr Finance to Comptroller, dated 11 April 1952, subject: Granting of Home Leave

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ATTACHMENT

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